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Supreme Court, U.S.
FILED

No. _____

051069 DEC 14 2005

In The

OFFICE OF THE CLERK

Supreme Court of the United States

HAROLD GREEN, ET AL.,

Petitioners,

v.

CLEARY WATER, SEWER & FIRE DISTRICT,

Respondent.

**On Petition For Writ Of Certiorari
To The Mississippi Supreme Court**

PETITION FOR WRIT OF CERTIORARI

Counsel of Record:

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QUESTION PRESENTED FOR REVIEW

This case involves the question of whether a "sewer district" existing under the Section 41-67-1 of the *Mississippi Code of 1972*, as amended, has the jurisdiction or authority to regulate Individual On-Site Wastewater Disposal Systems, same being an unconstitutional taking of property without just compensation in violation of the Fifth Amendment of the United States Constitution and Miss. Const. Art. 3 § 17 (1890).

INTERESTED PARTIES

PETITIONERS:

Harold Green,
 Helen M. Green,
 Donald L. Green,
 Janet Green,
 Charles E. Reis,
 Barbara J. Reis,
 Charles B. Reis,
 Jimmy Bomer,
 Kathy Bomer,
 Ramona Maxine Bomer,
 Kenneth W. Harrison,
 Johnnie Mae Harrison,
 Ramona McDonald,
 Louie Cooper,
 Joseph E. Webb,
 Lois Webb,
 Michael Steen,
 Chantay Steen,
 Roger G. Kelly,
 Shirley Kelly,
 Stephanie Collins,
 Glynne Tullos,
 Betty S. Tullos,
 Sheila R. Lee,
 Charles A. Crosser,
 Trey Boyd,
 Lisa Boyd,
 James J. Fitzpatrick,
 Judith Fitzpatrick,
 Frances Phillips Ray,
 Robert Paul Hamner,
 Larry G. Wigley,
 Walter L. Morris,

Cheryl L. Morris,
 James Parish,
 Grady Mahaffey,
 Shawn Byrd,
 April P. Woods,
 Kathy M. Horne,
 Shelby Lynchard, Jr.,
 Evelyn Lynchard,
 Clyde J. Monroe,
 Merle Y. Monroe,
 Paul F. Robinson,
 Joy E. Robinson,
 Robert J. Craft,
 Sheila Craft,
 Leslie M. Sivils,
 Delores Grube,
 Francis H. Broome,
 Warren N. Rice,
 Doris F. Rice,
 Jeff W. Rice,
 Jann R. Rice,
 Louise Burke,
 James M. Fletcher,
 Cindy Fletcher,
 Charles Burns,
 Elsie Burns,
 Marion A. Gray,
 Carolyn Gray,
 James N. White,
 Faye C. White,
 Clyde Davis,
 George Hayes,
 Mary L. Hayes,

INTERESTED PARTIES – Continued

Cora Cousin,
 Ida M. Love,
 Janice E. Gipson,
 Johnnie R. McGee,
 Moses J. McGee,
 Edmond L. Teasley Sr.,
 Sharon K. Teasley,
 Ed Bowlin,
 Anne Bowlin,
 Emily J. Bowlin,
 Wayne Wilson,
 Jeffrey R. Moran,
 Sheila E. Moran,
 John Applewhite,
 Sidney Paul Boteler,
 Mike Hall,
 Scott Higdon,
 John Mims,
 Newton Roberts,
 Gerald Wood,
 Janie A. Cook,
 Tiffany A. Cook,
 Billy B. Harris,
 Allie R. Harris,
 Bobby Jean Thomas,
 Elsie Downing (Bacon),
 Troy Ray,
 Jack D. Wood,
 Walter J. Shaw, Jr.,
 Jackie Shaw,

James Howell,
 Michael A. Evans,
 Donald Bridges,
 Rev. R. Andrew Fournier,
 Gibson Phillips,
 George Quillen,
 Michael H. Gardner,
 Charles W. Thomas,
 Bobby Downing,
 Paul W. Oswalt,
 Martha D. Oswalt,
 Eleanor Johnson,
 Robert D. Downing,
 Joe Davenport,
 James A. Johnson,
 R. D. Downing,
 Jimmie D. Martin,
 Donna Downing,
 Penny Renfree,
 Rick L. Phillips,
 Ivy L. McNabb,
 Wilma L. McNabb,
 Howard L. Corley,
 Stephen L. Corley,
 Fredna Corley,
 Donald Lee Simmons,
 Agnes L. Simmons,
 Charles McCurley,
 Dorothy McCurely
 City of Richland, Mississippi

RESPONDENT:

Cleary Water, Sewer & Fire District

City of Richland, Mississippi is not a party to this appeal.

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A. CITATIONS OF THE REPORTS OF THIS CASE

Green v. Cleary, 892 So. 2d 824 (Miss. 2005) (Table)

Green v. Cleary, 910 So. 2d 1 (Miss. App. 2004)

Green v. Cleary, 910 So. 2d 1022 (Miss. 2005)

B. STATEMENT OF THE BASIS FOR JURISDICTION

Mississippi Supreme Court, the state's court of last resort, on June 23, 2005 entered a judgment on the issue of whether a "sewer district" existing under the Section 41-67-1 of the *Mississippi Code of 1972*, as amended, has the jurisdiction or authority to regulate Individual On-Site Wastewater Disposal Systems, same being an unconstitutional taking of property without just compensation in violation of the Fifth Amendment of the United States Constitution and Miss. Const. Art. 3 § 17 (1890). Motion for Rehearing was denied on September 15, 2005.

Jurisdiction rests with the United States Supreme Court to review the decision of the Mississippi Supreme Court pursuant to 28 U.S.C.A. § 1257 and the Fifth Amendment of the United State's Constitution.

C. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE

U.S. Const. Amend. V, provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in

the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV, provides that:

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the

whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C.A. § 1257, provides as follows:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty

or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

D. STATEMENT OF THE CASE

The Cleary Water, Sewer & Fire District (hereinafter "the District") was created by special legislation granting it "all powers granted to water and sewer districts under the provisions of Sections 19-5-151 through 19-5-257, *Mississippi Code of 1972*, as now or hereafter amended." On or about June 21, 2001, the District enacted the "Decentralized Wastewater Use Ordinance" ("the Ordinance"). The Ordinance provides the District the "sole authority and responsibility" to permit all wastewater systems within the District. In addition, the Ordinance grants the District powers to "exercise supervision" over individual on-site wastewater disposal systems ("on-site wastewater systems"). The District used threats of cutting off the public water supply to individuals who failed to comply with the ordinance. The District sent to its constituents and to Mr. Green three letters declaring that failure to comply with the Ordinance would result in the District turning off their potable water supply.